IN THE HIGH COURT OF JUDICATURE AT BOBBY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1219 OF 2004

Naresh Ragoji Prajapati ..Petitioner.

V/s.

The State of Maharashtra ..Respondent

Shri R.C. Makhija for the Petitioner.
Shri A.S. Gadkari, APP for Respondent.

CORAM : A.M.KHANWILKAR, J.
DATED : DECEMBER 10, 2004

PC :-

. Heard learned counsel for the parties.

2. Rule. Rule made returnable forthwith. Shri Gadkari, APP waives notice for Respondent -State. As short question is involved, the petition is taken up for final disposal forthwith, by consent.

3. The Petitioner is a convict, undergoing sentence of 10 years in Yerwada Central Prison, Pune, in relation to the offence under section 376 of IPC. Petitioner had applied for being released on furlough leave, which application has been rejected on 25th February, 2004 by the competent authority. The only reason that has weighed with the competent authority

is that the co-accused, who was also released on furlough leave, is abscondining and the possibility that the petitioner will also abscond, cannot be ruled out. This reason has been cryticised by Shri Makhija, appearing for the petitioner as amicus curiae. He has placed reliance on the decision of our High Court reported in **1989 CRI. L.J. 681,** in the case of Sharad Keshav Mehta vs. State of Maharashtra, to contend that the right to furlough leave is substantial right and cannot be denied on such flimsy reasoning when there is no material to support the apprehension expressed in the order under challenge. He submits that merely because co-accused has absconded while on furlough leave by itself cannot be the basis to reject the application preferred by the petitioner unless there was further positive material on record before the competent authority to support the possibility of the petitioner indulging in the same manner. He submits that no material is forthcoming and if it is so, the order under challenge cannot be sustained in fact or in law. Learned APP on the other hand supports the order as passed by the competent authority. He however, fairly accepts on instructions by the concerned officer, who is present in the court, that the record does indicate that in

the past petitioner was granted furlough leave and he abided by the conditions on which he was released and returned back within the specified time. If this is the past experience in relation to the petitioner and as no other material is on record to remotely suggest that the petitioner is likely to abscond, if released, to my mind, the opinion recorded by the competent authority in rejecting the petitioner's application cannot be countenenced. Accordingly, the impugned order will have to be set aside and instead the application preferred by the petitioner before the competent authority for being released on furlough leave, as per rules, is allowed.

4. The concerned authority may take appropriate steps to comply with this order forthwith.

5. Rule made absolute in the above terms.

6. The court expresses appreciation for the assistance given by Shri Makhija in this case as an amicus curiae.

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